

UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH CAROLINA
 FLORENCE DIVISION

JOYCE E. ROWLEY,)	Civil Action No.: 4:06-1873-TLW-TER
)	4:07-1636-TLW-TER
Plaintiff,)	
)	
-vs-)	
)	REPORT AND RECOMMENDATION
CITY OF NORTH MYRTLE BEACH,)	
and JOHN SMITHSON, City Manager;)	
JOEL DAVIS, Assistant City Manager;)	
KEVIN BLAYTON, Public Works)	
Director, individually and in their)	
representative capacities as employees)	
of the City of North Myrtle Beach;)	
PLANNING AND DEVELOPMENT)	
DIRECTOR for the City of North Myrtle)	
Beach; and CATHY E. MADDOCK as)	
Personal Representative of the Estate of)	
Douglas Maddock;)	
)	
Defendants.)	
)	

I. INTRODUCTION

Presently before the Court is Defendants' Motion to Dismiss (Document #s 245, 353), which was filed on April 15, 2009. Defendants filed a Supplement (Document #s 248) on April 17, 2009. Because Plaintiff is proceeding pro se, she was advised pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), that a failure to respond to the Motion to Dismiss could result in dismissal of her Complaint. Plaintiff filed her Response (Document # 261) on May 8, 2009.

All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(e), DSC. Because the pending motions are dispositive, this Report and Recommendation is entered for review by the district judge.

II. DISCUSSION

This case has a long, complicated procedural history, most of which will not be repeated herein. On October 31, 2008, the district judge entered an Order (Document # 206) adopting the undersigned's alternative recommendation that Plaintiff be sanctioned for her discovery abuses in this case, namely, her repeated failure to appear for her properly noticed depositions.¹ Defendants filed their Declaration of Fees and Costs (Document # 213), to which Plaintiff filed Objections (Document # 214). The undersigned entered an Order (Document # 225) on March 12, 2009, directing Plaintiff to pay Defendants fees and costs in the amount of \$11,985.44.² The undersigned order that the fees and costs be paid by April 13, 2009, and that Plaintiff appear for her deposition at defense counsel's office at 10:00 a.m. on April 17, 2009. Plaintiff was warned that failure to pay the fees and costs and/or to appear for her deposition would result in a recommendation that her case be dismissed.

Defendants filed the present Motion on April 15, 2009, indicating that Plaintiff failed to pay the sanctions ordered in the March 12, 2009, Order. Defendants supplemented their Motion on April 17, 2009, indicating that Plaintiff did not appear for her deposition as ordered.

Rule 41(b), Fed.R.Civ.P, allows for the involuntary dismissal of an action for Plaintiff's failure to comply with a court order, and Rule 37(d), Fed.R.Civ.P., allows for sanctions, including dismissal, for failure to comply with the discovery process. Both of these rules and their application to this case were thoroughly discussed in the August 22, 2008, Report and Recommendation

¹Plaintiff filed a Motion for Reconsideration (Document # 243) of this Order, which the district judge denied (Document # 259).

²Plaintiff filed Objections (Documents # 234, 237) to this Order, which the district judge overruled (Document # 241).

(Document # 190), which is incorporated herein. Because Plaintiff has repeatedly failed to abide by Orders of this Court or to participate in the discovery process, her case should be dismissed.

III. CONCLUSION

Pursuant to Rules 41(b) and 37(d), Fed.R.Civ.P., and for the reasons discussed in the August 22, 2008, Report and Recommendation, the March 12, 2009, Order, and above, it is recommended Defendants' Motion to Dismiss (Document #s 245, 353) be granted and this case be dismissed with prejudice.³

s/Thomas E. Rogers, III

Thomas E. Rogers, III
United States Magistrate Judge

June 1, 2009
Florence, South Carolina

The parties' attention is directed to the important notice on the following page.

³Defendants have moved to hold all deadlines in abeyance pending a ruling on its Motion to Dismiss. Defendants Motion (Document # 266, 374) is **GRANTED**.